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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 350

NORTHWESTERN BELL TELEPHONE COMPANY,
Appellant,

vs.

NEBRASKA STATE RAILWAY COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA.

STATEMENT AS TO JURISDICTION.

F. E. RANDALL,
TRACY J. PEYCKE,
Counsel for Appellant.

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STATEMENT AS TO JURISDICTION.

The appellant above named, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal, respectfully represents:

(a)

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is Section 237 of the Judicial Code as amended (28 U. S. C. Sec. 344(a)) and as further modified by the Act of January 31, 1928 (45 Stat. L. 54, 28 U. S. C. A. Sec. 861a, Sec. 861b).

(b)

The statute of the State of Nebraska, the validity of which is involved upon this appeal, is that certain order of the

Nebraska State Railway Commission, made and entered April 9, 1934, from which an appeal was taken to the Supreme Court of the State of Nebraska in the above entitled proceeding as provided by the statutes of Nebraska, and which order was affirmed by the final judgment of said Supreme Court, — Nebr. —, 259 N. W. 362, which judgment it is now sought to have reviewed by the Supreme Court of the United States. The text of said order has not been officially published. The said order after certain recitals as to a hearing which preceded its issuance was, as amended by a further order of May 15, 1934, in the following terms:

> "It is therefore ordered by the Nebraska State Railway Commission that the composite depreciation rate of the Northwestern Bell Telephone Company be and the same is hereby fixed at 3½ per cent upon all of its depreciable property in Nebraska, including right-of-way, for the year 1934.
>
> "It is further ordered that the Northwestern Bell Telephone Company be and is hereby directed to use a composite rate of 3½ per cent upon all of its depreciable property in Nebraska including right-of-way, for the year 1934 for purposes of accounting and reporting to the Nebraska State Railway Commission."

(c)

The date of the judgment of the Supreme Court of the State of Nebraska sought to be reviewed was March 1, 1935, and this judgment became final on May 4, 1935, by virtue of the denial on that date of a motion for a rehearing duly and seasonably made by appellant in accordance with the rules of the Supreme Court of the State of Nebraska. The application for appeal to the Supreme Court of the United States is presented to the Acting Chief Justice of the Supreme Court of the State of Nebraska on July 5, 1935.

(d)

1. The said order is a statute of the State of Nebraska within the meaning of Section 237 of the Judicial Code, 28 U. S. C. 344(a):

King Manufacturing Company v. *City Council of Augusta et al.*, 277 U. S. 100;

Sultan Railway and Timber Company v. *Department of Labor and Industries of the State of Washington et al.*, 277 U. S. 135.

2. The Nebraska State Railway Commission has been vested by the Constitution of the State of Nebraska (Art. IV, Sec. 20) with legislative, administrative and judicial powers. *Hooper Telephone Company* v. *Nebraska Telephone Company*, 96 Nebr. 245, 147 N. W. 674.

The order here in question is a statute of the State of Nebraska purporting to be made effective by virtue of the powers so conferred upon said Commission.

3. The judgment of the Supreme Court of the State of Nebraska became final within the meaning of Section 237 of the Judicial Code, 28 U. S. C. 344(a) upon the overruling of a seasonable motion for rehearing in said court:

Gypsy Oil Company v. *Escoe*, 275 U. S. 498.

4. The appeal to the Supreme Court of the State of Nebraska brought in question the validity of said order upon the ground that it was repugnant to Section 1 of Article XIV of the amendments to the Constitution of the United States, to Article I, Section 8, Paragraph 3 of the Constitution of the United States, to Article VI, Paragraph 2 of the Constitution of the United States, and to Section 20, Paragraph 5 of the Interstate Commerce Act (49 U. S. C. Sec. 20(5)) and to the order of the Interstate Commerce

Commission made pursuant thereto on November 12, 1932, prescribing a Uniform System of Accounts for Telephone Companies, and to the System of Accounts so prescribed. The decision of the Supreme Court of the State of Nebraska was in all things in favor of the validity of said order.

It is therefore submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code as amended, 28 U. S. C. Sec. 344(a), and as modified by the Act of January 31, 1928, 45 Stat. L. 54, 28 U. S. C. A. Sec. 861a, Sec. 861b.

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